

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

BRYAN ROWDER,	)	<b>SD</b>
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 21724-12 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER**

This case was on the Court's October 21, 2013 trial calendar for Los Angeles, California. Mr. Rowder failed to appear when the case was called -- he had mailed in a last-minute request for continuance the Friday before. (Rule 133 deems such motions filed less than 30 days before calendar call to be dilatory, and they do not excuse a failure to appear.) Respondent, however, did appear, and the Court heard oral argument on his motion for summary judgment on July 25, 2013.

The Court denied that motion, but large parts of it were persuasive: This is a CDP case in which Mr. Rowder challenged his underlying tax liability for 2006, and the IRS gave him a chance to do so. The settlement officer handling the case sent Mr. Rowder a letter on May 15, 2012 asking him to provide information about his tax liability for that year. She also set a telephonic hearing for June 25. Much as he did in this Court, Mr. Rowder did not appear at the hearing but sent a letter a couple business days before asking for more time and including none of the information the settlement officer had asked for. He simply reiterated that he wanted to challenge his underlying tax liability. She sent him another letter giving him another couple weeks to send in information; he ignored that as well.

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This would ordinarily be enough to grant respondent's motion -- there's no error in not considering evidence that a taxpayer doesn't provide. *See Giamelli v. Commissioner*, 129 T.C. 114-16 (2007). However, as the Court explained to respondent's counsel, Code section 6330(c)(1) requires the IRS officer conducting the hearing to "obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met." One of these requirements is that any notice of deficiency be mailed to the taxpayer's last known address. Sec. 6212(b). If that didn't happen here, the consequence would not be that Mr. Rowder gets to contest his underlying liability, it would be an abatement of the assessment of the deficiency. *See Freije v. Commissioner*, 125 T.C. 35-37 (2005).

In *Hoyle v. Commissioner*, 131 T.C. 202-203 (2008), we held that a taxpayer doesn't even have to raise this issue on his own before or at the CDP hearing. Yet the settlement officer here did not even make a finding on this important issue, much less give an explanation.

Mr. Rowder asked for a remand; we have to conclude that he's entitled to one. On remand, he cannot challenge the amount of his underlying tax liability -- he's had his chance to do that. But the settlement officer must make a reasoned determination on the issue of whether the IRS followed its administrative procedures in assessing the deficiency -- Did it send a notice of deficiency to Mr. Rowder's last known address? Did he otherwise receive it with enough time to petition in Tax Court? But -- we stress again -- if that notice was sent to his last known address and he did not receive it, he has missed his opportunity to contest the "existence and amount of his underlying tax liability."

To make this effective, it is

ORDERED that respondent issue a supplemental notice of determination on or before February 3, 2014. It is also

ORDERED that the parties file status reports responding to that supplemental notice on or before March 3, 2014.

The parties may change these deadlines by stipulation filed with the Court.

**(Signed) Mark V. Holmes**  
**Judge**

Dated: Washington, D.C.  
November 4, 2013